

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD BUZZARD, JR.,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C14-1663 MJP

ORDER ADOPTING REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on Petitioner Ronald Buzzard Jr.'s Objections, (Dkt. No. 38), to the Report and Recommendation of the Honorable James P. Donohue, United States Magistrate Judge. (Dkt. No. 36.) Having reviewed the Report and Recommendation, Petitioner's Objections, and all related papers, the Court ADOPTS the Report and Recommendation. Petitioner's habeas petition is DENIED as untimely and this case is DISMISSED with prejudice.

Background

Petitioner seeks Section 2254 habeas relief from his 2002 Washington State conviction for first degree rape of a child. (Dkt. Nos. 10, 21.) The Report and Recommendation ("R&R")

1 summarizes the relevant facts and the procedural history of Petitioner's criminal case. (Dkt. No.
 2 36 at 2–6.) The Court does not repeat them here.

3 In the R&R, Judge Donohue recommended this Court deny Petitioner's habeas petition
 4 and deny the issuance of a certificate of appealability on the grounds that the habeas petition is
 5 untimely. (*Id.* at 11.) Petitioner objects to Judge Donohue's R&R on the grounds that (1) any
 6 procedural default should be excused based on the Supreme Court's decision in Martinez v.
 7 Ryan, 132 S. Ct. 1309 (2012); (2) facts from his plea and sentencing hearing transcripts
 8 constitute newly discovered evidence excluding his claims from AEDPA's one-year time bar;
 9 and (3) that personal restraint petitions ("PRPs") that he filed in state court tolled the limitations
 10 period. (Dkt. No. 38.)

11 **Discussion**

12 **A. Legal Standard**

13 Under Federal Rule of Civil Procedure 72, the district judge must resolve de novo any
 14 part of the Magistrate Judge's R&R that has been properly objected to and may accept, reject, or
 15 modify the recommended disposition. Fed. R. Civ. P. 72(b)(3); See also 28 U.S.C. § 636(b)(1).

16 **B. Petitioner's Objections to the R&R**

17 Petitioner first argues any procedural default should be excused based on the Supreme
 18 Court's decision in Martinez v. Ryan, 132 S. Ct. 1309 (2012). (Dkt. No. 38 at 1–3.) In
 19 Martinez, the Supreme Court held that "inadequate assistance of counsel at initial-review
 20 collateral proceedings may establish cause for a prisoner's procedural default of a claim of
 21 ineffective assistance of counsel." Id. at 1315. Here, however, Judge Donohue recommended
 22 this Court deny Petitioner's habeas petition as untimely; not that the Court deny the petition on
 23 the grounds that Petitioner failed to raise his ineffective assistance of counsel claim in state
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1 collateral proceedings. (Dkt. No. 36.) Martinez does not excuse the untimeliness of Petitioner's
2 habeas petition.

3 Petitioner also argues that facts from his plea and sentencing hearing transcripts
4 constitute newly discovered evidence excluding his claims from the one-year time bar. (Dkt. No.
5 38 at 3.) Judge Donohue adequately addressed this argument and found “[t]he facts and legal
6 issues supporting petitioner's claims were available as early as May 3, 2005, when the judgment
7 and sentence became final on direct review” and that “[p]etitioner could have raised the claims
8 within the AEDPA statute of limitations, but he failed to do so.” (Dkt. No. 36 at 11.)
9 Petitioner's objection to the R&R fails to point out any error in the R&R.

10 Finally, Petitioner argues that the PRPs he filed in state court tolled the limitations period.
11 (Dkt. No. 38 at 3.) Judge Donohue adequately addressed this argument and found that “[e]ven
12 assuming arguendo, however, that the 2003 PRP and/or the 2005 motion did toll the statutory
13 limitations period . . . state post-conviction or other collateral review would still have been
14 completed by no later than February 7, 2006” and that Petitioner's federal habeas petition would
15 still be untimely. (Dkt. No. 36 at 9.) Petitioner's objection to the R&R fails to point out any
16 error in the R&R.

17 **Conclusion**

18 The Court ADOPTS the Report and Recommendation. Petitioner's habeas petition is
19 DENIED as untimely and this case is DISMISSED with prejudice. In accordance with Rule 11
20 of the Rules Governing Section 2254 Cases in the United States District Courts, a certificate of
21 appealability is DENIED with respect to the Court's determination that Petitioner's habeas
22 petition is time-barred.

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1 The clerk is ordered to provide copies of this order to all counsel and to Petitioner.

2 Dated this 15th day of October, 2015.

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Marsha J. Pechman
United States District Judge

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